No. 80-764

JAN 13 1981

In the Supreme Court of the United States

OCTOBER TERM, 1980

RAYMOND A. ENSTAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

M. CARR FERGUSON
Assistant Attorney General

ROBERT E. LINDSAY
MARY L. FAHEY
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-764

RAYMOND A. ENSTAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

QUESTIONS PRESENTED

1. Whether there was sufficient evidence to convict petitioner of conspiracy to defraud the United States by impeding the assessment of federal taxes.

2. Whether a search warrant based on the observations of undercover agents during a visit to petitioner's office, with his consent, is invalid.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Fraternal Order of Eagles v. *United States*, 57 F.2d 93	5, 6
Gouled v. *United States*, 255 U.S. 298	5, 6
Hoffa v. *United States*, 385 U.S. 293	6, 7
Ingram v. *United States*, 360 U.S. 672	4
Katz v. *United States*, 389 U.S. 347	7
Lewis v. *United States*, 385 U.S. 206	6, 7
Marshall v. *Barlow's, Inc.*, 436 U.S. 307	7
United States v. *Payner*, No. 78-1729 (June 23, 1980)	6
United States v. *Rosenblatt*, 554 F.2d 36	5

Statute:

18 U.S.C. 371	1

PREVIOUS PAGE WAS BLANK

OPINIONS BELOW

The judgment of the district court is not reported. The opinion of the court of appeals (Pet. App. A) is reported at 622 F. 2d 857.

JURISDICTION

The judgment of the court of appeals was entered July 31, 1980, and a petition for rehearing was denied on September 15, 1980 (Pet. App. B). The petition for a writ of certiorari was filed on November 12, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Texas, petitioner and several other persons were convicted of conspiracy to defraud the United States by impeding the Internal Revenue Service in the ascertainment and collection of taxes in violation of 18 U.S.C. 371. Petitioner was sentenced to five years' imprisonment and fined $10,000. The court of appeals affirmed (Pet. App. 13-41).

The object of the conspiracy was to conceal illegal income generated in the United States, allowing the participants to evade federal income taxation. To effect the purposes of the conspiracy, illegally earned money was taken surreptitiously out of the United States and then returned in the form of fictitious loans from an off-shore corporation to American corporations specifically created to receive the loans.

On September 6, 1977, undercover agents Clayton and House of the Drug Enforcement Administration met with Harold Oldham on a yacht in Marina Del Rey in Los Angeles, California (4 Tr. 212-246; 5 Tr. 407-413).[1] Oldham told the agents about his off-shore loan company in the Grand Cayman Islands in the British West Indies. The company, Esmeraldas y Mariposas, was created by Oldham and his attorney to make fictitious loans to American corporations (4 Tr. 212-215; 5 Tr. 410). Oldham also told the agents that he was now ready to supply them with cocaine and that he would help them launder the profits derived from their cocaine sales (4 Tr. 241-242; 5 Tr. 409-410). The plan, according to Oldham, was "I.R.S. tested and foolproof" (4 Tr. 186-187, 192-199, 204-209; 5 Tr. 400).

Eleven days later, the two DEA agents met Oldham in Miami, Florida, and bought one-half pound of cocaine from him for $20,000. It was during this transaction that Clayton inadvertently met Oldham's cocaine supplier, Paul Hodgson (4 Tr. 247-252; 5 Tr. 423-430). The following day Clayton and House went to the Grand Cayman Islands. There they met with Oldham and his financial consultant, Derek Price, and discussed the details of the scheme (4 Tr. 262-265).

On October 6, 1977, Clayton and House met with petitioner in his office in Dallas, Texas. Petitioner told the DEA agents that he was aware of their recent trip to the Grand Cayman Islands and that he had known Derek Price for some time. During the conversation, the agents told petitioner that their

---

[1] "Tr." refers to the ten-volume record on appeal, which has been filed with this Court.

money was derived from sales of cocaine and stolen jewelry (5 Tr. 447). Petitioner replied that he would set up an American corporation to be the recipient of fictitious loans from Esmeraldas y Mariposas. The agents paid petitioner $400 to create Grand Vin, Inc., with the understanding that the company would be used to launder their illegally obtained funds (4 Tr. 270-273; 5 Tr. 447). The agents told petitioner that they would soon be ready to launder $50,000 and petitioner volunteered to accompany them to the Grand Cayman Islands and "walk [them] through the process" (4 Tr. 274). Petitioner also advised the agents on two different ways to evade federal taxes (Pet. App. 19).

On November 2, 1977, petitioner accompanied Clayton and House to the Grand Cayman Islands with the $50,000. At Miami International Airport, House gave the money to petitioner, who then placed it in a suitcase that he later carried on board the airplane (4 Tr. 281; 5 Tr. 457-458). On the way to the Islands, petitioner showed the agents letters he had written on Grand Vin stationery, one requesting a loan of $50,000 from Esmeraldas y Mariposas and another thanking Esmeraldas y Mariposas for the loan (4 Tr. 284).

During their stay on the Islands, Clayton, House, and petitioner met with Derek Price and a bank official. Clayton and House received a cashier's check for $46,270. The agents then paid petitioner $3,500, who in turn paid $500 to Price. The agents then returned to the United States and deposited the cashier's check in the Grand Vin account at the First Security National Bank of Dallas (4 Tr. 286-289; 5 Tr. 462-464).

ARGUMENT

1. Contrary to petitioner's claim (Pet. 5-7), the court of appeals correctly determined that there was sufficient evidence to convict petitioner of conspiracy to defraud the United States. Petitioner was intimately connected with Oldham in an on-going and "tested" scheme to launder illicit income, thereby impeding the function of the Internal Revenue Service. Petitioner specifically advised the DEA agents on how the scheme could be used to evade income taxes (Pet. App. 19) and actively aided them by setting up the American corporation (4 Tr. 270-273; 5 Tr. 447), carrying the money to the Grand Cayman Islands (4 Tr. 281; 5 Tr. 457-458), and "walk[ing] [them] through the process" (4 Tr. 274).[2]

A conspiracy may have multiple purposes and "if one of its objectives, even a minor one, be the evasion of federal taxes, the offense is made out, though the primary objective may be the concealment of another crime." *Ingram* v. *United States*, 360 U.S. 672, 679-680 (1959). In this case, although one of the objects of the conspiracy may have been to avoid discovery of the illegal activity that generated the income, the evidence was more than sufficient to support the jury's finding that another was to conceal the income itself and thereby evade federal taxes. By secretly taking the money out of the United States

---

[2] Thus, petitioner's reliance on *Ingram* v. *United States*, 360 U.S. 672 (1959), is misplaced. In *Ingram*, this Court held that because there was nothing to show that the defendants were even aware of their employers' tax liability, the evidence was insufficient to show that the employees participated with their employers in a conspiracy to evade their employers' income taxes.

and having it paid to an American shell corporation, petitioner and his co-conspirators accomplished both purposes. Until they received the money from the corporation they ostensibly had no income.[3] Depending on the manner in which the money was withdrawn from the corporation, the participants could very well avoid income taxation altogether, as petitioner advised the two DEA agents (Pet. App. 17-18 & nn. 2-3). Indeed, the plan was presented to one of petitioner's co-conspirators as a "tax dodge" (Pet. App. 20 & n. 4). The nature of the plan and at least one of its purposes was fully set out in the indictment and proven at trial.[4]

2. Relying on *Fraternal Order of Eagles* v. *United States*, 57 F.2d 93 (3d Cir. 1932), and *Gouled* v. *United States*, 255 U.S. 298 (1921), petitioner apparently asserts (Pet. 7-11) that a warrant based, in part, on information that the undercover agents observed while in his office with his consent was invalid. Petitioner does not assert that the agents pilfered any documents or that they even searched his office while he was absent. Rather, he apparently rests his argu-

---

[3] Since the money was received by the shell corporation ostensibly as a loan, no income taxes were due from the corporation.

[4] Thus, petitioner's reliance on *United States* v. *Rosenblatt*, 554 F.2d 36 (2d Cir. 1977), is also misplaced. In *Rosenblatt*, the government charged a rabbi with conspiracy to defraud the United States, but the evidence showed that the only other conspirator had misled the rabbi as to the nature of the fraud. The Second Circuit held, therefore, that the government had failed to prove any agreement between the rabbi and his alleged co-conspirator; the rabbi had agreed to assist in accomplishing a fraud other than the one that was actually committed.

ment on the untenable proposition that the agents' observations of what was in his office and available for anyone who entered the office to see constituted an unreasonable search or seizure solely because they were undercover agents and therefore secured entry into his office by "fraud and misrepresentation" (Pet. 8).

It is doubtful that the broad language in *Fraternal Order of Eagles* survived this Court's decisions in *Lewis* v. *United States*, 385 U.S. 206 (1966), and *Hoffa* v. *United States*, 385 U.S. 293 (1966). In *Fraternal Order of Eagles*, the Third Circuit held that evidence obtained pursuant to a search warrant should have been suppressed where the warrant was based on the observations of federal agents who had gained entry to a private club by misrepresenting their identities and presenting *stolen* membership cards. In *Lewis* and *Hoffa*, this Court rejected the broad contention that the government's use of either undercover agents (*Lewis* v. *United States*, *supra*, 385 U.S. at 210) or informants (*Hoffa* v. *United States*, *supra*, 385 U.S. at 300-303) necessarily resulted in an unreasonable search or seizure. Thus, if *Fraternal Order of Eagles* retains any vitality, it is only as to its narrow holding based on the theft of the membership cards. But see *United States* v. *Payner*, No. 78-1729 (June 23, 1980).

In *Gouled*, the agent obtained entry by pretending to make a social call and then ransacking the room when the suspect was absent. The case was distinguished in *Lewis* on the basis of the secret ransacking. 385 U.S. at 210. In *Lewis*, this Court concluded that *Gouled* was inapplicable where the suspect invited the agent into his home for the specific purpose of executing a felonious sale of narcotics. Contrary to

petitioner's assertion (Pet. 10), the agents here did not misrepresent their mission—they were prospective "buyers" of petitioner's services as surely as the agent in *Lewis* was a buyer of narcotics. The agents were taken to petitioner's office by Oldham, one of petitioner's clients and a member of the conspiracy, and they were invited to enter as prospective clients. They did not enter the office by force or stealth; they were not surreptitious eavesdroppers. Once they were inside, petitioner freely discussed the details of the money laundering scheme with the agents. Clearly, petitioner did not rely on the security of his office when he made these incriminating statements. Compare *Hoffa* v. *United States*, *supra*, 385 U.S. at 303.

The Court's holding in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), is inapplicable in this case. *Barlow's* involved an administrative search by a government agent, where "[t]he critical fact * * * [was] that entry *over Mr. Barlow's objection* [was] being sought by a Government agent." *Id.* at 314 (emphasis added). Entry in this case was not sought over petitioner's objection. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz* v. *United States*, 389 U.S. 347, 351 (1967).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

M. CARR FERGUSON
Assistant Attorney General

ROBERT E. LINDSAY
MARY L. FAHEY
Attorneys

JANUARY 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 335788 233